

LINCOLN OFFICE
SUITE 500
301 SOUTH 13TH STREET
LINCOLN, NEBRASKA 68508-2578
TELEPHONE 402-437-8500
FAX 402-437-8558

WOODS & AITKEN

L • L • P

DENVER OFFICE
SUITE 525
8055 EAST TUFTS AVENUE
DENVER, COLORADO 80237-2835
TELEPHONE 303-606-6700
FAX 303-606-6701

OMAHA OFFICE
SUITE 525
10250 REGENCY CIRCLE
OMAHA, NEBRASKA 68114-3754
TELEPHONE 402-898-7400
FAX 402-898-7401

MONICA L. FREEMAN
DIRECT: (402) 898-7421
EMAIL: MFREEMAN@WOODSAITKEN.COM
WWW.WOODSAITKEN.COM

WASHINGTON OFFICE
SUITE 310
5151 WISCONSIN AVENUE, N.W.
WASHINGTON, D.C. 20016-4124
TELEPHONE 202-944-9500
FAX 202-944-9501

PLEASE RESPOND TO OMAHA ADDRESS

March 30, 2015

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: *In the Matter of Petition for Limited, Expedited Waiver by Westelcom Network, Inc. of Section 61.26(a)(6) of the Commission's Rules, WC Docket No. 15-69, (filed Feb. 23, 2015), released March 25, 2015*

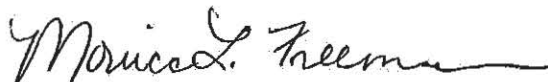
Submission of Redacted Versions of Confidential Information and Highly Confidential Information by Westelcom Network, Inc. Pursuant to Joint Protective Order, WC Docket No. 15-69, DA 15-373, released March 25, 2015

Dear Ms. Dortch:

Pursuant to the requirements of the *Joint Protective Order*, WC Docket No. 15-69, DA 15-373, released March 25, 2015, attached for filing are the redacted versions of the Confidential and Highly Confidential Information in support of and accompanying the *Petition for Limited, Expedited Waiver by Westelcom Network, Inc. of Section 61.26(a)(6) of the Commission's Rules*, WC Docket No. 15-69, filed in the above-captioned proceeding. Also attached hereto are individual pages of the aforementioned Petition that have been updated to reflect the updated caption and to conform to the requirements of the *Joint Protective Order* released in this proceeding on March 25, 2015, along with a corresponding declaration from Westelcom Network, Inc. (the "Company"). For the convenience of the Commission, attached is a courtesy copy of the Company's original February 23, 2015 filing, with the updated pages substituted and dated with the current date.

Please contact the undersigned should you have any questions.

Respectfully submitted,


Monica L. Freeman

Attachments

REDACTED - FOR PUBLIC INSPECTION

ATTACHMENT A-1

REDACTED - FOR PUBLIC INSPECTION

Part I.A - Page 3

Footnote 11 - Westelcom offers broadband internet services to [REDACTED] and telecommunications services – local dial tone and/or long distance services – to [REDACTED] covering the rural six county area in the Adirondack region of New York from Lake Ontario to Lake Champlain.

Part I.A – Page 4

Footnote 17 - [REDACTED]

Please note: The information that is underlined here is intended to be “Confidential”. The remainder of the text is non-confidential.

REDACTED - FOR PUBLIC INSPECTION

ATTACHMENT A-2

Footnote 22 -

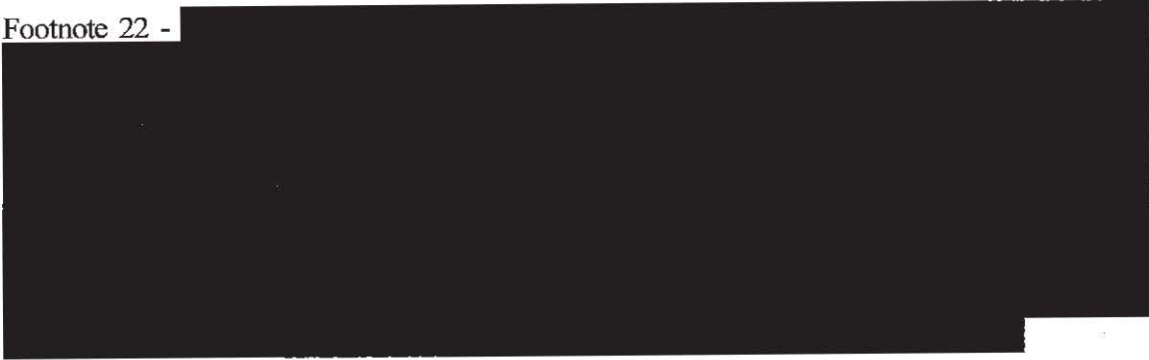


Exhibit 1

REDACTED - FOR PUBLIC INSPECTION

Community	Access Line/Connection Type	Line/Connection Count
-----------	-----------------------------	-----------------------

[REDACTED]		
------------	--	--

REDACTED - FOR PUBLIC INSPECTION

WATERTOWN PLATTSBURGH MALONE ELIZABETHTOWN CLAYTON

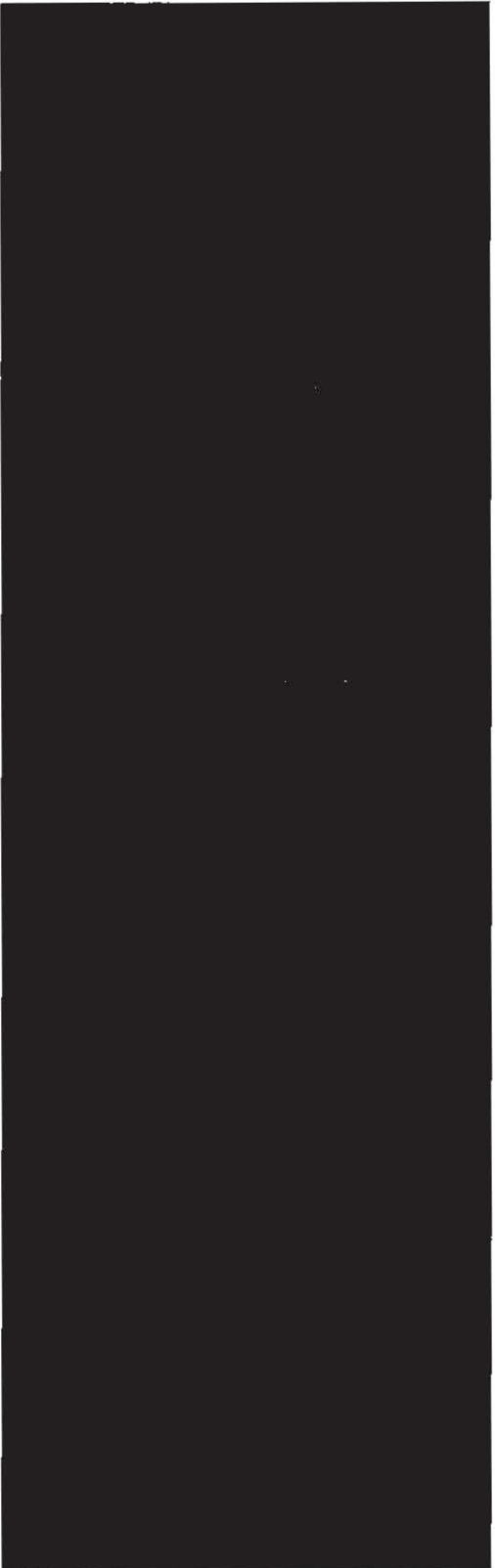


Exhibit 3

REDACTED - FOR PUBLIC INSPECTION

Westelcom Network Inc
Summary of Investments and Access Revenues
2011-Sept 2014



Sheet1

All Information Should Be Kept Confidential

Key Points from Financial Statements (June 30, 2014 is the last period audited)

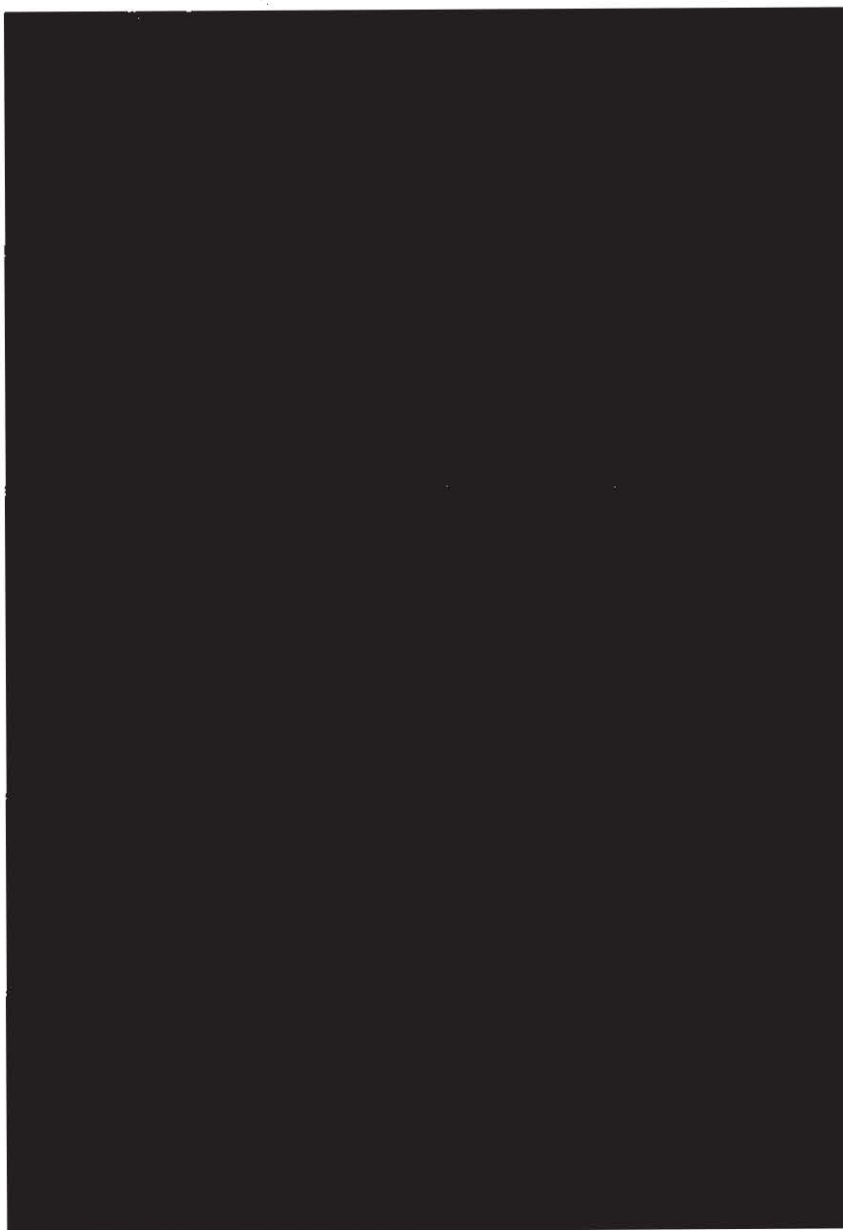


Exhibit 4

REDACTED - FOR PUBLIC INSPECTION

Westelcom Network Inc
Profit Center Analysis
2011-Sept 2014



**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

**Petition for Limited, Expedited Waiver By
Westelcom Network, Inc. of Section
61.26(a)(6) of the Commission's Rules**

WC Docket No. 15-69

**PETITION FOR LIMITED, EXPEDITED WAIVER BY WESTELCOM NETWORK,
INC. OF SECTION 61.26(A)(6) OF THE COMMISSION'S RULES**

Westelcom Network, Inc.

Thomas J. Moorman
Woods & Aitken LLP
5151 Wisconsin Ave, N.W. Suite 310
Washington, D.C. 20016
Telephone: (202) 944-9500
Facsimile: (202) 944-9501
tmoorman@woodsaitken.com

and

Monica L. Freeman
Woods & Aitken LLP
10250 Regency Circle, Suite 525
Omaha, NE 68114
Telephone: (402) 898-7400
Facsimile: (402) 898-7401
mfreeman@woodsaitken.com

Date: February 23, 2015

Updated March 30, 2015

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Limited, Expedited Waiver By)	WC Docket No. 15-69
Westelcom Network, Inc. of Section)	
61.26(a)(6) of the Commission's Rules)	
)	

**PETITION FOR LIMITED, EXPEDITED WAIVER BY WESTELCOM NETWORK,
INC. OF SECTION 61.26(A)(6) OF THE COMMISSION'S RULES**

Westelcom Network, Inc. ("Westelcom"), pursuant to 47 C.F.R. § 1.3, respectfully requests a limited, expedited waiver of 47 C.F.R. § 61.26(a)(6) (the "Rural CLEC Definition") which, when applied, allows such competitive local exchange carrier ("CLEC") to charge exchange access users of its network the "rural exemption" rates under 47 C.F.R. §61.26(e). Westelcom seeks a limited waiver that will allow it to qualify for the "rural exemption" until July 1, 2020 and charge the rates provided for under Section 61.26(e) of the Commission's rules. For the reasons stated herein, Westelcom respectfully maintains that the instant waiver request is warranted because the application of the Rural CLEC Definition to Westelcom's specific circumstances runs contrary to and, in fact, undermines the public interest determinations made by the Commission in its *USF/ICC Transformation Order*¹ and *Healthcare Connect Order*.² Thus, as part of the relief requested herein, Westelcom respectfully requests that the Commission

¹ See *In the Matter of Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *aff'd* In Re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), *pet. for cert. pending* ("USF/ICC Transformation Order").

² *In the Matter of Rural Health Care Support Mechanism*, Report and Order, WC Docket No. 02-60, 27 FCC Rcd 16678 (2012) ("Healthcare Connect Order").

to this customer base is fully consistent with the overarching objectives of broadband deployment announced in the *USF/ICC Transformation Order* and the *Healthcare Connect Order*.⁷ Accordingly, as is set forth herein, good cause exists to grant Westelcom's petition for waiver.⁸

I. BACKGROUND

A. Westelcom Operations

Westelcom⁹ is a CLEC operating in New York.¹⁰ Westelcom was established in 1981 and has been providing broadband internet services and telecommunications services – local dial tone and/or long distance services – to customers¹¹ located in a rural six county area in the Adirondack region of New York from Lake Ontario to Lake Champlain.¹² The Adirondack region is, as a general matter, sparsely populated and is known for its “dazzling lakes, wild

university; or law enforcement, fire or ambulance station in the Proposed Funded Service Area.” 7 C.F.R. § 1739.3. Consistent with this definition, the businesses that Westelcom serves are also private institutions comparable to the public entities described in 7 C.F.R. § 1793.3, and are thus included in the definition of Critical Community Facility for the purposes of this petition.

⁷ See *Healthcare Connect Order* at ¶¶ 34 and 39.

⁸ Pursuant to the March 25, 2015 *Joint Protective Order* issued in this proceeding (DA 15-373), Attachments A-1 and A-2 contain all of the Confidential and Highly Confidential Information which Westelcom has submitted in connection with this filing and which have been fully redacted in this public version. References to these Attachments have been made herein. Pursuant to the *Joint Protective Order* the Stamped Confidential Documents and Stamped Highly Confidential Documents are being filed separately with the Commission.

⁹ Attached hereto is the “Declaration of Paul Barton” attesting to the underlying facts contained in this filing. Mr. Barton is President of Westelcom. See Attachment B.

¹⁰ Westelcom is a wholly-owned subsidiary of Chazy & Westport Telephone Corporation (“Chazy”), an incumbent rural local exchange carrier in the State of New York. Westelcom does not compete with Chazy.

¹¹ See Attachment A-1.

¹² This area is commonly referred to as the “North Country.” See Map of New York Regional Economic Development Councils, available at <http://regionalcouncils.ny.gov/map>. Westelcom uses the term “Adirondack North Country” to refer to this same region.

mountains, and charming towns and villages.”¹³ Over the past eleven years, Westelcom has invested over five million dollars to deploy a robust fiber-based network in specific areas in the Adirondack North Country.¹⁴ For example, its fiber network provides coverage to ninety percent (90%) of Watertown, New York,¹⁵ as well as fiber optic infrastructure and other services in the rural communities of Malone, Clayton, Elizabethtown, Ticonderoga, and Plattsburgh.¹⁶ During this same time period, Westelcom has focused its investments on deploying fiber optic circuits to replace leased copper lines from the incumbent carrier, Verizon New York, Inc., in an effort by Westelcom to improve quality, increase network capabilities, gain efficiency, reduce costs, and ultimately to encourage economic development in the area.¹⁷ As a result of its investments Westelcom has replaced ninety-five percent (95%) of its leased copper lines with wholly-owned fiber.¹⁸ This investment provides high-speed fiber optic transport capabilities to meet the advanced broadband needs of its CCF and other business customers that otherwise may not have been provided with state-of-the-art services crucial to the customers’ needs.¹⁹

¹³ See About the Adirondacks, available at <http://visitadirondacks.com/about>.

¹⁴ See Attachment C, page 6, Kelly Vadney, *Westelcom Installs New Call Switch*, Watertown Daily Times, Nov. 15, 2006, at B1.

¹⁵ Specifically, ninety percent (90%) coverage of Watertown’s “in-town” geographic limits.

¹⁶ Each of the communities of Malone, Clayton, Elizabethtown, Ticonderoga, and Plattsburgh communities have a population of less than 50,000 and have not been recategorized as part of an urbanized area by the CB.

¹⁷ See Attachment A-1; Attachment C, page 7, Arianna MacNeill, *Westelcom rolling out new fiber optic cable network*, The Malone Telegram, Mar. 5, 2013, at A1; Attachment C, page 8, Press Release, Westelcom Network, Inc., *Broadband to Benefit Development* (2008), available at http://www.westelcom.com/NewsRoom/2008/devel_corp.htm; Attachment C, page 9, *Fiber-Optic Line Being Installed for City Hall, Fire Station*, Watertown Daily Times, Aug. 24, 2006 at B3.

¹⁸ See Attachment A-2, Exhibit 1.

¹⁹ See Attachment C, page 10, *Westelcom keeps on improving communications infrastructure*, Watertown Daily Times, Mar. 7, 2010 at P34, available at

Westelcom's investments have proven to be particularly important for CCFs and the healthcare industry in the Adirondack North Country. Westelcom has become one of the primary providers of communications services to smaller health care facilities in the Adirondack North Country by interconnecting a significant number of hospitals, clinics and practices.²⁰ This effort includes providing the Internet backbone for the Fort Drum Regional Health Planning Organization.²¹ In Watertown, New York for example, Westelcom provides service to a considerable number of CCFs and those entities make up a significant percentage of Westelcom's business customers.²² Consistent with Westelcom's experience, it has been noted that, "as healthcare professionals rely more on electronic medical records, tests, images, videos" and telemedicine, high capacity broadband networks have increasingly become a necessary way

<http://www.watertowndailytimes.com/article/20100307/UNKNOWN/303079739>; *Why Jefferson Community College Chose Westelcom for their Telecommunications Needs*, Testimonial (2009), available at <https://www.youtube.com/watch?v=uLjkbYqLPMM>; Attachment C, page 11, *Immaculate Heart Central Gets High-Speed Network*, Watertown Daily Times, Jan. 6, 2008 at B1; Attachment C, page 12, Press Release, Westelcom Network, Inc., *Westelcom Delivers High-Speed Fiber Network to Samaritan Medical Center* (2007), available at <https://www.westelcom.com/NewsRoom/2007/samaritanfiber.htm>; Attachment C, page 13, *Closing the Loop on Fiber Optics in Watertown*, originally reported by MSNBC.com (2006) available at http://www.westelcom.com/NewsRoom/2006/msnbc_fiber.htm.

²⁰ Westelcom interconnects over 100 hospitals, clinics and practices in the Adirondack North Country.

²¹ See Attachment C, pages 14-16, Amanda Morrison, *Wired for Success*, NNY Business (January 2014) at 27, available at http://www.westelcom.com/wired_for_success.pdf. Fort Drum does not have a military hospital on base, so the Fort Drum Regional Health Planning Organization ("FDRHPO") works "to analyze the existing healthcare system available to Fort Drum Soldiers, their Families, and the surrounding civilian community, identify gaps and then leverage additional medical resources." See *What is FDRHPO?*, available at <http://www.fdrhpo.org/our-model-of-care/what-is-fdrhpo/>. The mission of FDRHPO involves coordination of military treatment facilities with civilian healthcare facilities to provide complete care to Fort Drum. *Id.*

²² See Attachment A-2 at page 1 and Exhibit 2.

services provided over it.²⁵ Westelcom has maintained its commitment to the communities it serves through a measured deployment of a fiber-based network based on the revenues that the existing network generates, even as it competes with Time Warner Cable, Charter Communications, Verizon Communications, Inc., and AT&T, Inc. (each of which is a multi-faceted and much larger competitor in areas of the State of New York).

Westelcom implemented the FCC's ICC phase down outlined for CLECs in the *USF/ICC Transformation Order* and planned accordingly based on the transition schedule announced in that decision. This planning, however, contemplated the phase down of Westelcom's interstate switched exchange access service rates based on Westelcom's continued status as a Rural CLEC and thus the use of the rural exemption-established rate under Section 61.26(e) of the Commission's rules. Westelcom respectfully submits that any delay in granting this limited waiver request and explicitly allowing and authorizing the re-filing by Westelcom of Rural CLEC-based rates will have a significant negative impact on Westelcom and its customers and deny Westelcom the glide path that unquestionably was intended for all carriers by the *USF/ICC Transformation Order*.

²⁵ See Attachment A-2, Exhibit 3.

largest competitors in Watertown also operate, Westelcom does not serve any truly urban areas with which to average its cost.

Yet, as a result of the CB's complex definition of hops and jumps and impervious surfaces, Westelcom is, absent the requested waiver grant, foreclosed from the reasonable transition of a carrier's ICC rates afforded to *all other* carriers by the *USF/ICC Transformation Order*. The reclassification also undermines Westelcom's ability to carry out a goal it shares with the Commission – to enhance advanced telecommunications availability for the rural health care industry.³⁴

C. The Effect of the Reclassification of Watertown, New York as an “Urbanized Area”

The reclassification of Watertown was brought to the attention of Westelcom through billing disputes submitted by certain interexchange carriers.³⁵ In reviewing these disputes and based on its internal analysis of carrier access billing invoices, Westelcom determined that a change of its Rural CLEC status under Section 61.26(a)(6) would immediately reduce its interstate exchange access revenues by ninety-six percent (96%). This reduction in revenue is significant and, as with any carrier, has impacted Westelcom's fiber investment decisions.³⁶ This impact curtails Westelcom's ability to expand advanced telecommunications services within the

http://www.apd.army.mil/pdffiles/r25_13.pdf. Westelcom serves only limited portions of the Adirondack North Country. Thus, it is not eligible to compete for on-post or military switching or transport services. Westelcom also does not have the facilities existing to serve civilian businesses located on the base and to provide such service through the lease of other companies' facilities would not be economical. Likewise, the communities that were added to form Watertown's urbanized area are not currently served by Westelcom, nor could they be served economically. *See supra* note 31.

³⁴ *See, e.g., Healthcare Connect Order* at ¶¶ 34 and 39.

³⁵ Westelcom became aware that the reclassification occurred on October 24, 2014, when an interexchange carrier disputed a billing.

³⁶ *See* Attachment A-2, Exhibit 4.

interstate switched access service rates in order to regain its status as a Rural CLEC under the Rural CLEC Definition, thus enabling its use of the Section 61.26(e)-provided NECA rates as a benchmark until July 1, 2020.⁵⁵ Westelcom respectfully submits that there is no better case for a waiver than in this instance. Strict application of the regulation runs afoul of the overriding framework the Commission has established in allowing a transition period for carriers to “adjust to marketplace changes and technological advancements, while furthering [the] overall goal of promoting a migration to modern IP networks.”⁵⁶ Granting Westelcom’s waiver request will not significantly increase the number of access lines that are subject to the rural exemption. Westelcom’s current switched access line count is considerably less than one percent (1%) of the total switched access lines in the United States as of December 31, 2013.⁵⁷

Likewise, Westelcom respectfully submits that the Commission need not be concerned that a grant of the relief that Westelcom seeks will open the “flood gates” for similar requests. As noted above, following the 2010 census, the CB reclassified twenty-nine communities as “urbanized areas” using the complex criteria equally applicable to Watertown.⁵⁸ Moreover, Westelcom has provided specific facts regarding its operations that would narrowly tailor the

⁵⁵ *USF/ICC Transformation Order* at Figure 9.

⁵⁶ *Id.* at ¶ 802.

⁵⁷ Westelcom currently maintains over 2,000 switched access lines compared to the total of 85,821,000 switched access lines that were reported as of December 31, 2013. *See* Industry Analysis and Technology Division, FCC, *Local Telephone Competition: Status as of December 31, 2013* at Figure 4 (Oct. 2014).

⁵⁸ *See supra* note 26, and accompanying text.

DECLARATION

I, Paul F. Barton, President and General Manager of Westelcom Network, Inc. (the "Company"), do hereby declare under penalties of perjury that I have read the foregoing letter dated March 30, 2015 from Thomas J. Moorman to Marlene H. Dortch regarding "Submission of Redacted Versions of Confidential Information and Highly Confidential Information by Westelcom Network, Inc. Pursuant to Joint Protective Order, WC Docket No. 15-69, DA 15-373, released March 25, 2015" and the attachments to that letter and the information contained therein regarding the Company is true and accurate to the best of my knowledge, information, and belief.



Paul F. Barton
President and General Manager

Date: 3/30/15